IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8233 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes. : YES

2. To be referred to the Reporter or not? Yes. :

3. Whether Their Lordships wish to see the fair copy of the judgement? - : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - : NO

5. Whether it is to be circulated to the Civil Judge? - : NO

MADHUSUDAN DHARSHIBHAI TANK

Versus

M. ANWAR

Appearance:

MR JR NANAVATI for Petitioner

MR SV KOPPAR for Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/02/2000

ORAL JUDGEMENT

1. By means of this petition the petitioner has sought for quashing the order dated 5-12-1998 Annexure-K whereby the penalty of removal from the service of the petitioner has been awarded with immediate effect in terms of para 10.1 (b) (iii) and 10.3 of the Sainik School Society Rules and Regulations.

2. The petitioner joined as an Accountant in the service of the Sainik School, Balachadi (Jamnagar) on 1st July, 1981. Some anonymous letter written by SSB members was received by the office of Local Board of Administration, Sainik School, Balachadi in September, 1987 wherein various allegations of corruption against the Principal - respondent were made. Another anonymous letter was also addressed to Mr. K.C. Pant, Defence Minister, Government of India, New Delhi which is said to have been written by the staff members making various allegations against the respondent received by the defence ministry on 22-4-1988. Copies of the first anonymous letter were also sent to the Prima Minister, Defence Minister and Honourary Secretary, Sainik School Society, Ministry of Defence, New Delhi and Inspecting Office, Sainik Schools Society, New Delhi. It appears that those anonymous letters were sent to the respondent for investigation. After investigation the matter the respondent authority came to the conclusion that the petitioner is a person behind those two letters against the Principal - respondent. The respondent issued the show cause notice dated 15-6-1988 to the petitioner Accountant of the respondent school as to why the disciplinary proceedings should not be initiated against the petitioner on the following charges :

(a) The audit report from the DHE was received in August 1987 which was endorsed to the petitioner for his safe custody and the petitioner said that some staff members wanted the copy of the audit report for getting it published in the newspaper in order to malign the administration. Inspite of the inquiry from the petitioner, the petitioner did not disclose the names of the persons who had asked for the copy of the audit report for the purpose of publishing it. Even though distorted version of the audit report was found mentioned in one of the anonymous letters received in the month of September, 1987.

(b) The T.A. bill of the Registrar in connection with entrance examination was also kept in personal capacity of the petitioner and he had checked the same. Even then, distorted version that Rs.100/- extra was charged by the Registrar came out in the anonymous letter received in April 1988.

(e) Regarding water supply, the petitioner made certain suggestions amounting to sabatoging the supply of water in such a serious situation and is an act of disloyalty to the institution.

(f) The petitioner falsely reported that the Books of Account and balance sheet were written and the Chartered Accountant was not coming for verification of balance sheet and signing the same particularly when he found that the books of account were not ready. Why this false report as also lack of sincerity and efficiency in the petitioner's duties inspite of plenty of time given to him and repeated personal reminders from February 88 onwards.

(g) It was reported that the petitioner was inciting the auditors (LAO staff) to put even unfounded observations. That is a serious matter which is tantamounting to anti-school activity.

2. The petitioner was required to submit his explanation within 11 days from the date of receipt of the notice. The petitioner requested the Principal respondent by the letter dated 25-6-1988 for supply of the copies of the letter, audit report, books of accounts and other documents for replying to the allegations made in para (a) to (g) of the show caused notice dated 15-6-1988 Annexure-B and in case he is not supplied, nonsupply of the documents will cause great injustice to his defence. The petitioner also requested for one month's time to reply to the show cause notice. The another notice dated 2-7-1988 was sent to the petitioner stating therein that the contents of the petitioner's reply were not bonafide and the reply was prima facie vague and in order to kill the time. The charges levelled against the petitioner by the show cause notices were clear and self-explanatory as the petitioner being an Accountant was fully aware about all the things and documents no further clarification or document is deemed necessary to be given to the petitioner as desired by him vide his letter dated 25-6-1988 and the petitioner was further given an opportunity to submit his explanation within 15 days from the date of receipt of the said letter. The petitioner gave reply by the letter dated

17-6-1998 stating that nonsupply of the documents will cause great prejudice to him. He also denied it all the allegations and stated that he was not aware of any of the documents which were likely to be used against him and neither they were read or seen by him. In case, the petitioner is refused to supply the copies of the documents or any other evidence it will not amount to afford an opportunity to defend himself and the respondent Principal had already made up mind to ignore him without giving any opportunity to defend himself and he gave reply to the allegations made against him in the show cause notice. In absence of the copies of the documents required by the petitioner to be supplied, the inquiry was held and the petitioner was punished as stated above and hence this petition.

3. Learned counsel for the respondent has filed the affidavit-in-reply. Heard learned counsel for the parties and perused the materials on record.

4. Learned counsel for the petitioner submitted that in the two anonymous letters there are certain allegations regarding corruption embezzlement and irregularities committed by the Principal respondent. In place of the inquiry or investigation in respect of the allegations, corruption, embezzlement or irregularities committed by the principal of the respondent school, the petitioner was put into trouble by initiating domestic inquiry against him. It is also pointed out that false show cause notices were issued by the Principal respondent and the domestic inquiry was set up by the principal of the respondent school. As such, the Principal - respondent has become the Judge of his own cause which is not required under the law and is violative of the principles of natural justice. In support of his contentions, learned counsel for the petitioner has relied on the decision of the Apex Court in the case of Baidyanath Mahapatra Vs. State of Orissa and another, reported in AIR 1989 SC 2218, wherein it has been held that the members of the Tribunal must follow rules of natural justice in administering justice like Judges, they should not sit in judgment on their own decisions. Sh. Gian Chand was disqualified to hear the appellant's case. The order of the Tribunal is vitiated on this ground. Learned counsel for the petitioner has also relied on the decision of the Apex Court in the case of Ashok Kumar Yadav and others etc. etc. Vs. State of Haryana and others reported in AIR 1987 SC 452, wherein it has been held as under :

"It is one of the fundamental principles of our

> jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting." The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias.
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> There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection."

5. Learned counsel for the petitioner submitted that the petitioner was working as the Accountant in the respondent school. After receipt of the show cause notices the petitioner required copies of certain documents which are likely to be relied on by the respondents against the petitioner in connection with the allegations made against the petitioner and he has not been given any opportunity of defence as required by him. As such, defence of the petitioner is prejudiced due to nonsupply of the documents required for making defence in reply to the show cause notices. Thirdly, learned counsel for the petitioner submitted that as there are certain allegations against the Principal respondent and the Principal - respondent found the hand of the petitioner in the allegations made in the anonymous letters and hence he set up the inquiry against the petitioner. As such the domestic inquiry held against the petitioner is bias and malafide. In support of his contention, learned counsel for the petitioner relied on the decision of the Apex Court in the case of State of West Bengal and others Vs. Shivananda Pathak an others, reported in AIR 1998 SC 2050. Learned counsel for the petitioner has also relied on the rule laid down in the earlier case, wherein it has been held that the Revenue Minister, who had cancelled the petitioner's licence or

the lease of certain land, could not have taken part in the proceeding for cancellation of licence as there was political rivalry between the petitioner and the Minister, who had also filed a criminal case against the petitioner. This principal has also been applied in cases under labour laws or service laws, except where the cases were covered by the doctrine of necessity. In another case, the Settlement Commissioner was held to be not competent to sit over his own earlier order passed as Settlement Officer under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. These principles have had their evolution in the field of Administrative Law but the Court performing judicial functions only cannot be accepted from the Rule of Bias as the Presiding Officers of the Court have to hear and decide contentions issues with an unbiased mind.

6. Learned counsel for the respondent raised preliminary objection that the present petition is not entertainable in this Court as the statutes provides the appeal against the order of dismissal. The petitioner has not availed of alternative remedy of appeal. Hence, this petition cannot be entertained. He also relied on the decision of the Apex Court in the case of Shyam Kishore and Others Vs. Municipal Corporation of Delhi, reported in 1993 (1) SCC 24, wherein it has been held that where adequate remedy can be read in the Statute plea of resort to writ remedy under Article 226 and 227 must be discouraged.

7. Learned counsel for the petitioner has also relied on the decision of the Apex Court in the case of Union of India and Others Vs. M/s. Cottage Arts Emporium an Others, reported in 1991 Supple. (2) SCC 732, wherein some proceedings were pending in the trial court and the writ petition was filed before the High Court regarding the some interlocutory order, the observation made by the Supreme Court is that in case the proceedings before the trial court are decided, the petitioner would have an alternative remedy to file an appeal before the appellate Court, the proceedings would be infructuous and the party himself pursued the statutory remedy available under the Act. Learned counsel for the respondent has also relied on the decision of the Apex Court in the case of H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Others Vs. M/s. Gopi Nath & Sons and Others, reported in 1992 Supple. II SC 312, wherein it has been held that where hierarchy of appeals provided by the statute statutory remedy must first be exhausted for entertaining of the writ petition under Article 226 of

the Constitution of India. He has also relied on the decision of the Single Judge of this Court in the case of Gujarat Electricity Board Vs. M.P. Singha or successor, Regional Provident Fund Commissioner, reported in 2000 (1) G.L.H. 65, wherein it has been held that the writ petition was summarily dismissed on the preliminary objection that writ petition was not maintainable in view of the existence of alternative remedy of appeal against the impugned order.

8. I have considered the submissions made on behalf of the parties carefully and perused the material on the record. I consider first of all the preliminary objection raised by the learned counsel for the respondent regarding maintainability of the writ petition in this Court without availing of the alternative remedy of appeal before the appropriate authority. In the case of Gujarat Electricity Board (supra) the learned Single Judge of this Court has also observed that the Supreme Court has not laid down any absolute rule of law that in every case where there is alternative remedy, writ petition can be entertained ignoring existence of alternative remedy.

9. In the case of State of U.P. Vs. Mohammad Nooh, reported in AIR 1958 SC 86, wherein it has been observed as under :

> "But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

10. In view of the observations of the Apex Court there can be no hard and fast water tied rule that the writ petition is entertainable unless alternative remedy of appeal is exhausted. This rule finds the support from the decision of the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors, reported din 1998 (8) SUPREME 176, wherein it has been held as under :

> "The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in

> the nature of Habeas Corpus. Mandamus, Prohibition, Quo Warranto and Certiorari for enforcement of any of the Fundamental Rights contained in Part-III of the Constitution, but also for "any other purpose." Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The jurisdiction of the High Court is entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

11. I am in complete agreement with the learned counsel for the petitioner that there is violation of the principles of natural justice in the present case inasmuch as the respondent has become the Judge of his own cause. Certain anonymous letters containing the allegations against the respondent principal were sent to the higher authorities regarding corruption, embezzlement and irregularities. The Principal - respondent assuming that the petitioner is behind those anonymous letters issued the show cause notices to the petitioner as to why the disciplinary proceedings should not be initiated against him and the domestic inquiry was held at the instance of the Principal - respondent against the petitioner and for that the punishment of dismissal was awarded to the petitioner. As such, this Court is fully justified to entertain this petition wherein the principles of natural justice has been violated. Moreover, the petition has been admitted in the year 1988. It is not proper for this Court to relegate the petitioner to avail of alternative remedy of appeal after twelve years, the matter can be decided on merits of the

case. Thirdly, judicial trend of today is to shorten the litigations and decide in accordance with law and not to leave for further litigation. Thus, the objection raised by the learned counsel for the respondent is not sustainable in the eye of law.

12. So far as violation of the principles of natural justice is concerned, it is admitted in the affidvait-in-reply that the handwriting of one of the letters tallies with one of the staff member Shri Maherishi who has accepted vide his explanation dated 4-3-1989 that it was written by him at the request of the petitioner and his friend Santok Singh. The affidavit-in-reply filed by the Principal - respondent shows that the petitioner was behind the anonymous handwritten complaint which also becomes clear from the fact that (i) it pertains to the purchase of the stationery made in September, 1985, the details were with the Account Section and the paid vouchers were kept in the custody of the Accountant., (ii) on the payment voucher attached to the payment of these bills, endorsements were made on the reverse creating doubts about the regularity of the purchase (iii) it was objected in the audit dated 13-10-1986 and the same doubt had been raised as has been done in the anonymous complaint, in December, 1988 (4) after COI's recommendations and disciplinary action, the petitioner and/or Shri Santokh Singh, or either of them, was in the possession of the draft anonymous complaint and sent the same to the Chairman to show that it was not the petitioner but some one else who was in the habit of making anonymous complaints. The petitioner or his group, thus, tried to take vengeance against said Shri Maherishi, who was a member of the COI and did not give any note of dissent, and (v) the petitioner's standard operating procedure remain the same. He deliberately allowed some mistake to be committed, instead of giving the correct advice, unauthorisedly wrote on the reverse of the paid vouchers in order to invite audit objections and then floated the same in anonymous complaints."

13. The petitioner was considered to be behind the anonymous letters which were made against the irregularities, corruption and embezzlement etc. against the Principal - respondent. Thus, the disciplinary proceedings initiated by the respondent authority are malafide and vindictive on this ground.

14. So far as the contention of the learned counsel for the petitioner that the petitioner was not given any opportunity of making defence or reply to the show cause

notice is concerned, the petitioner has stated in para 4.3 of the petition that he had requested copies of certain documents by the letter dated 17-7-1988 and the request of the petitioner for supply of the copies of the relevant documents in order to enable him to defence himself was made by the letter dated 17-7-1988 and the respondent by the letter dated 2-7-88 denied to supply the copies of certain documents as required by the petitioner wherein it is stated that since the charges levelled against the petitioner in the show cause notices are itself clear and self-explanatory and since as an Accountant he was fully aware about all the things and the documents no further clarification or document was required necessary to be given to the petitioner as desired by him by the letter dated 25-6-1988. In this respect, the respondent has stated in para 10 of his affidavit-in-reply that the reply dated 17-7-1988 was found unsatisfactory and oral inquiry was held wherein he was given full opportunity to defend himself. Once the respondent has given the notice in writing to the petitioner for initiating domestic inquiry no reason appears to hold oral inquiry does not appear to be probable. In the instant case, as it has been held that the inquiry conducted against the petitioner was malafide and against the principles of natural justice. Hence, the impugned order is liable to be quashed and set aside.

15. Accordingly, this petition is allowed and the impugned order dated 5-12-1988 Annexure - K passed by the Principal - respondent is hereby quashed and set aside. The respondent - Principal, Sainik School, Balachadi, Jamnagar is directed to take the petitioner back in his service forthwith from the date of dismissal and to pay all the consequential benefits. The respondent shall ascertain and calculate the entire arrears of dues of the petitioner's salary and other benefits within a period of three months from the date of production of a certified copy of this order and pay the same to the petitioner within a period of one month thereafter. Rule is made absolute, with no order as to costs.

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/JVSatwara/